

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SIXTEENTH REGION**

DISH NETWORK CORPORATION

Employer

and

Case 16-RC-10920

COMMUNICATIONS WORKERS
OF AMERICA, LOCAL 6171

Petitioner

**REGIONAL DIRECTOR'S REPORT ON
OBJECTIONS AND RECOMMENDATIONS**

Pursuant to a petition filed on January 15, 2010, and a Stipulated Election Agreement, approved by the Acting Regional Director of the Sixteenth Region on January 22, 2010, an election was conducted on February 23 and 25, 2010, in the agreed upon unit.¹ The corrected tally of ballots, made available to the parties at the conclusion of the election, showed that there were approximately (50) eligible voters, twenty five (25) of whom cast their ballots in favor of the Petitioner and nineteen (19) of whom cast ballots against representation by the Petitioner. There were no void or challenged ballots.

On March 4, 2010, the Employer timely filed objections to conduct affecting the election, copies of which were served upon the Petitioner by the Regional Director. A copy of the Employer's Objections is attached as Exhibit 1.

¹ All regular full-time technicians and warehouse employees employed at the Employer's facility located at 1861 Valley View Lane, Suite 150, Farmers Branch, TX. Excluding all other employees including quality assurance employees, marketing and sales employees, commercial technicians, managers, office clerical, guards and supervisors as defined in the Act.

Pursuant to Section 102.69 of the Board's Rules and Regulations, Series 8, as amended, the undersigned, after reasonable notice to all parties to present relevant evidence raised by the Employer's Objections, has completed the investigation, considered the positions of the parties and has prepared this report to be served on the parties. This report contains findings of fact and recommendations to the Board in Washington, D.C., as to the disposition of the issues, with such findings and recommendations made upon the entire administrative investigation.

The Employer's Objections

1. On January 15, 2010, a person by the Name of Anthony Schaffer filed a Petition on behalf of Local 6171, Communication[s] Workers of America. DISH's review of Local 6171's website, as well as the most recent LM-2 filed by Local 6171, reveals no mention of Mr. Schaffer as an employee or lawful agent of Local 6171. DISH maintains that Mr. Schaffer did not lawfully file the petition on behalf of CWA, Local 6171.
2. By the above and other conduct, the Union has interfered with, coerced, and restrained employees in the exercise of their Section 7 rights and has interfered with their ability to exercise a free and reasoned choice in the election.

Objection No. 1

In its first objection, the Employer challenges the validity of the petition on the basis that Anthony Schaffer, whose name and signature appears on the NLRB petition form as a local organizer filing on behalf of the Petitioner, was not an authorized agent of the Petitioner. In support of its position, the Employer presented one witness who testified that on January 15, 2010, the subject petition was filed by the Communications Workers of America, Local 6171. The signature box on the petition form indicates that the petition was filed by Anthony Schaffer, "Local Organizer." Following the Acting

Regional Director's approval of a Stipulated Election Agreement executed by the parties, the Employer made an inquiry into Schaffer's status with the Petitioner by asking agents of the Employer if they were familiar with Schaffer or had any information about his status with the Petitioner. None of the Employer's agents acknowledged any such familiarity. Further, a review of the Local's website and LM-2 reports revealed no mention of Schaffer's status as an agent of the Petitioner. The Employer contends that based upon the results of its investigation, Schaffer had no standing to file the petition and the Region had no jurisdiction to conduct the election based on a petition that contained a misstatement of material fact.

In response to this allegation, the Petitioner stated that at all times relevant to the filing and processing of the petition filed in this matter, Anthony Schaffer was serving as an agent of the Petitioner as a paid part-time organizer holding the position as Unit Director and Organizer. Consistent with this position, he assisted the Petitioner with various organizational campaigns, including the organizational effort associated with the instant petition.

Section 11002.2(a) of the NLRB Case Handling Manual, Part Two - Representation Proceedings, in support of Section 9(c)(1)(A) of the National Labor Relations Act states, in part:

A RC or RD petition may be filed by an employee or a group of employees, an individual or a labor organization acting on their behalf, or by two or more labor organizations acting jointly.

Based on the foregoing, I find no merit to the Employer's objection. Initially, the Employer's position regarding Schaffer's status as an agent of the Petitioner is contradicted by the Petitioner's claim that during all times material, Schaffer has served

as a paid part-time organizer for the Petitioner with the responsibilities to assist with their organizational activities. From the information presented, I conclude that Anthony Schaffer was an agent of the Petitioner and his filing of the instant petition was wholly consistent with his position as a part-time organizer. Secondly, the Petitioner's subsequent actions in adopting and processing the petition establishes that the Petitioner fully embraced and condoned Schaffer's filing of the petition to resolve the outstanding question concerning representation. A copy of the petition was subsequently served upon the Petitioner at the address of the Local Union office. Moreover, in response to the Employer's question about Schaffer's status raised after approval of the Stipulated Election agreement but prior to the election, the Regional office contacted the Petitioner for clarification of his status. In response, the Petitioner fully acknowledged and embraced Schaffer's authority to act on their behalf. At no time prior or subsequent to the February 23 and 25 election did the Petitioner, who was clearly aware that the petition had been filed in this matter, question the validity of the petition or Schaffer's authority to act on their behalf. Had Schaffer filed the petition without the authority of the Petitioner, they undoubtedly would have subsequently objected that he was acting absent their authority and would not have remained silent while the petition was progressing to an election. Finally, even assuming that Schaffer was not an agent, he is permitted to file the RC petition under the provisions described above.

Accordingly, I find no merit to Employer's Objection No. 1 and shall recommend that it be overruled.

Objection No. 2

In its second objection the Employer presents a catchall objection which is nonspecific and unsupported by evidence. It has long been held that objections which are nonspecific, for example, which allege “by these and other acts, etc.,” are insufficient, should not be treated and should be dismissed on their face. See *Airstream, Inc.*, 288 NLRB 220, 229 (1988), citing *Atlantic Mills Servicing Corp.*, 120 NLRB 1284, 1287 (1958). Also see, Section 102.69(a) of the Board’s Rules and Regulations and Section 11392.5 of the NLRB Case Handling Manual, Part Two - Representation Proceedings, which provides:

The objections must contain a short statement of the reasons therefor. Sec. 102.69(a), Rules and Regulations. The statement should be specific, not conclusionary, and constitutes an essential part of the objections. Objections which are nonspecific, for example, which allege “by these and other acts, etc.,” are insufficient, should not be treated and should be dismissed on their face.

Accordingly, I find no merit to Employer’s Objection No. 2 and shall recommend that it be overruled.

RECOMMENDATION

IT IS RECOMMENDED that the Board overrule and dismiss the Employer’s Objections in their entirety.

IT IS FURTHER RECOMMENDED that the Board issue a Certification of Representative certifying the Petitioner as the exclusive representative for the purpose of collective bargaining for the employees in the bargaining unit described herein.

Right to File Exceptions: Pursuant to the provisions of Section 102.69 of the National Labor Relations Board's Rules and Regulations, Series 8 as amended, you may file exceptions to this Report with the Executive Secretary, National Labor Relations Board, 1099 14th Street, N.W., Washington, D.C. 20570-0001. Under the provisions of Section 102.69(g) of the Board's Rules, documentary evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and that are not included in the Report, is not part of the record before the Board unless appended to the exceptions or opposition thereto that the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the Report shall preclude a party from relying on that evidence in any subsequent related unfair labor practice proceeding.

Procedures for Filing Exceptions: Pursuant to the Board's Rules and Regulations, Sections 102.111 - 102.114, concerning the Service and Filing of Papers, exceptions must be received by the Executive Secretary of the Board in Washington, D.C. by close of business on (April 22, 2010), at 5 p.m. (ET), unless filed electronically. Consistent with the Agency's E-Government initiative, parties are encouraged to file exceptions electronically. If exceptions are filed electronically, the exceptions will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Eastern Time on the due date. Please be advised that Section 102.114 of the Board's Rules and Regulations precludes acceptance of exceptions filed by facsimile transmission. Upon good cause shown, the Board may grant special permission for a longer period within which to file. A copy of the

exceptions must be served on each of the other parties to the proceeding, as well as to the undersigned, in accordance with the requirements of the Board's Rules and Regulations.

Filing exceptions electronically may be accomplished by using the E-filing system on the Agency's website at www.nlr.gov. Once the website is accessed, select the E-Gov tab, and then click on the E-filing link on the pull down menu. Click on the "File Documents" button under Board/Office of the Executive Secretary and then follow the directions. The responsibility for the receipt of the exceptions rests exclusively with the sender. A failure to timely file the exceptions will not be excused on the basis that the transmission could not be accomplished because the Agency's website was off line or unavailable for some other reason, absent a determination of technical failure of the site, with notice of such posted on the website.

Dated at Fort Worth, Texas this 8th day of April 2010.

/s/ Martha Kinard
Martha Kinard, Regional Director
National Labor Relations Board
Region 16
Room 8A24, Federal Office Bldg.
819 Taylor Street
Fort Worth, TX 76102